

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

MICHAEL GIARDIA and PETER CROCKER,

X

Plaintiffs,

ORDER

06-CV-114 (SJF) (MLO)

-against-

WASHINGTON MUTUAL BANK, F.A.,

Defendant.

X

FEUERSTEIN, J.

Plaintiffs Michael Giardia and Peter Crocker (collectively “Plaintiffs”) commenced this action on January 10, 2006, against defendant Washington Mutual Bank (“Defendant”), alleging violations the Employment Retirement Income Security Act, 29 U.S.C. § 1001 *et seq.*, (“ERISA”), and New York State Labor Law § 190 *et seq.* Defendant now moves for dismissal pursuant to Fed. R. Civ. P. 12(b)(6). In response to Defendant’s motion, Plaintiffs have voluntarily withdrawn their ERISA claims. Accordingly, absent diversity jurisdiction pursuant to 29 U.S.C. § 1332, there is no longer a basis for federal jurisdiction. In its reply brief, Defendant contends that, as a federally chartered corporation, it is a national citizen ineligible for diversity jurisdiction. See Auriemma Consulting Group, Inc. v. Universal Sav. Bank, 367 F. Supp. 2d 311 (E.D.N.Y. 2005). Since resolving this issue is essential to the Court’s disposition of this case, Plaintiffs are hereby given twenty (20) days from the date of this Order to respond to Defendant’s contention that there is no basis for diversity jurisdiction. Defendant is given ten (10) days to reply.

IT IS SO ORDERED.

Sandra J. Feuerstein
United States District Judge

Dated: December 11, 2006
Central Islip, New York

Copies to:

Saul D. Zabell
Zabell & Associates, P.C.
4875 Sunrise Highway
Suite 300
Bohemia, NY 11716

Daniel V. Duff, III
Jackson Lewis, LLP
One North Broadway
White Plains, NY 10601